In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 595

LOUIS S. NELSON, WARDEN, SAN QUENTIN PRISON,
Petitioner,

vs.

JOHN EDWARD GEORGE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for the Petitioner

THOMAS C. LYNCH
Attorney General of the State of California
ALBERT W. HARRIS, JR.
Assistant Attorney General
EDWARD P. O'BRIEN
Deputy Attorney General
LOUISE H. RENNE (MRS.)
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-1337
Attorneys for Petitioner

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 410 F.2d 1179 (9th Cir. 1969). It is also set forth in its entirety in the Appendix at pages 56-61.

The opinions of the United States District Court for the Northern District of California are not officially reported, but are set forth in their entirety in the Appendix at pages 4, 24, and 28, respectively.

JURISDICTION

Jurisdiction is conferred on this Court by Title 28, United States Code, section 1254(1).

The judgment of the United States Court of Appeals was filed on May 9, 1969. A timely petition for rehearing was filed on May 23, 1969, and denied on June 18, 1969.

On September 15, 1969, a petition for writ of certiorari was filed in this Court. The petition for writ of certiorari was granted on December 8, 1969, in No. 595, October Term 1969.

QUESTIONS PRESENTED

The Court of Appeal for the Ninth Circuit has held that a California state prisoner may bring a habeas corpus action in the District Court for the Northern District of California in order to challenge the constitutionality of a North Carolina sentence which he is to serve later. The Court has held that the California warden is the proper party respondent to defend such an action. The questions presented by this case are:

1) Whether the respondent George is "in custody" under the North Carolina judgment in order to render habeas corpus relief available under the decision in *Peyton v. Rowe,* 391 U.S. 54 (1968).
2) Whether the California warden is a proper party respondent to defend the North Carolina conviction since it has been given no effect in California.
3) Whether the Court of Appeals correctly determined that the District Court for the Northern District of California has jurisdiction to inquire into the validity of the North Carolina conviction.

STATUTES INVOLVED

This case involves interpretation of the federal Habeas Corpus Act, Title 28, United States Code sections 2241 et seq. The pertinent provisions are set forth in Appendix A to our brief.

STATEMENT OF THE CASE

Introduction

This case has arisen since the decision in *Peyton v. Rowe,* 391 U.S. 54 (1968) overruling *McNally v. Hill,* 293 U.S. 131 (1934) and holding that a state prisoner serving consecutive sentences is "in custody" under any one of them under Title 28, United States Code section 2241(c)(3). In *Peyton v. Rowe, supra,* the consecutive sentences were imposed by the same state. The questions posed by this case arise because separate sentences have been imposed by separate sovereign states.

The facts and proceedings with respect to this case are as follows:

A. Proceedings in the State Courts.

On April 27, 1964, John Edward George, the petitioner for writ of habeas corpus below, and respondent in this Court, was convicted in the San Francisco Superior Court of a violation of California Penal Code section 211 (robbery in the first degree). *People v. John Edward George,* No. 62815. He was sentenced to state prison for the term prescribed by law. Under section 213, California Penal Code, the sentence for first degree robbery is an indeterminate five years to life sentence. (A. 30-32).

Following his conviction detainers were filed in California by the states of Kansas, Nevada, and North Carolina on June 4, 10 and 11, 1964, respectively. (A. 32, 42-55).

On or about July 20, 1966, pursuant to California Penal Code section 1389 ("The Agreement on Detainers") and at his request, George was released to North Carolina to stand trial in that state upon a North Carolina robbery charge which underlay the detainer (A. 8, 56). His conviction in North Carolina was subsequently affirmed by the North Carolina Supreme Court in *State v. George,* 271

N.C. 438, 156 S.E.2d 845 (1967). Apparently certiorari in this Court was not sought. George then was returned to California to complete his California sentence, and as he alleged below, service on his North Carolina sentence will not begin until he returns to North Carolina (A. 25-26).

B. Proceedings in the Federal Courts.

1. PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

On December 7, 1967, George filed a petition for writ of habeas corpus in the United States District Court, Northern District of California, in an action entitled "John Edward George v. State of North Carolina" in which he challenged only his North Carolina conviction. On January 10, 1968, the District Court denied the petition with leave to amend on the ground that George had failed to name a proper party respondent (A. 4).

Thereafter, on February 26, 1968, George amended his petition and in an action entitled "John Edward George v. L. S. Nelson, Warden, San Quentin State Prison (in the capacity as Agent for State of North Carolina) and Warden, North Carolina State Prison (Name Unknown)" again brought suit in the District Court challenging his North Carolina conviction. (A. 5-23). He alleged that he was not tried in North Carolina within the period of time permissible under the Agreement on Detainers. Accordingly, he urged that the North Carolina court was without jurisdiction to proceed, and that he was denied his constitutional right to a speedy trial in North Carolina. He also alleged that he was convicted on the basis of known perjured testimony.[1] On March 1, 1968, the Court again denied

1. The Ninth Circuit noted (A-57) that George alleged that he presented the first two of these grounds for relief (lack of jurisdiction and denial of right to speedy trial) in his direct appeal in North Carolina. He did not allege in his application that he presented the perjury ground in any North Carolina state court proceeding.

the petition on the ground that in the absence of a specific allegation, it was assumed that George was serving concurrent sentences on the California and North Carolina convictions. Since George would not be entitled to release even if his North Carolina conviction was held to be illegal, the Court held that *McNally v. Hill*, 293 U.S. 131 (1934) required denial of the petition (A. 24).

On March 15, 1968, George filed a petition for rehearing on the ground that commencement of service on the North Carolina sentence would not begin until he was in "actual custody" of the North Carolina Prison authorities. He stated that the effect of the North Carolina sentence was therefore consecutive, and that *McNally v. Hill, supra*, did not apply (A. 25-27).

On March 21, 1968, the District Court denied the motion for rehearing, holding that the "*McNally* rule is equally applicable to the situation when the sentence imposed pursuant to the conviction under attack is to be served after, rather than concurrently, with the valid sentence." (A. 28).

On April 25, 1968, the Court ordered that the motion for certificate of probable cause be granted (A. 3).

2. PROCEEDINGS IN THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

On or about June 13, 1968, and prior to the filing of an opening brief in the Court of Appeals, George filed a motion to remand the proceedings to the district court. He based his motion upon the ground that *Peyton v. Rowe, supra*, had recently been decided overruling *McNally v. Hill, supra*, and that that decision had held that a prisoner serving consecutive sentences is "in custody" under any one of them under Title 28, United States Code section 2241(c)(3).

Accordingly, he argued that *Peyton v. Rowe, supra,* required that his case be remanded to the District Court in order to have the merits of his alleged federal claims adjudicated (A. 58).

On July 1, 1968, the named respondent below, Warden Nelson of San Quentin Prison, filed an "Opposition to 'Motion to Remand to District Court' and Motion to Dismiss Appeal" (A.1). This was the first appearance made by the Warden. He opposed the motion to remand and urged that he was not a proper party respondent to defend the North Carolina conviction and that an appropriate North Carolina party was an indispensable party. He also argued that the District Court for the Northern District of California did not have jurisdiction to inquire into the validity of the North Carolina conviction (A. 58-59).

The Court of Appeals by order dated July 12, 1968, passed the matter to a hearing on the merits (A. 1). After a closing brief was filed by George on or about July 22, 1968, petitioner Nelson filed an Answering Brief. After the appointment of counsel for George, a "Petitioner-Appellant's Reply Brief" was filed by counsel on his behalf, urging that Warden Nelson was a proper party respondent to defend the North Carolina conviction and that the California District Court had jurisdiction to inquire into its validity (A. 2).

Oral argument was held on February 28, 1969 (A. 2). At the argument, counsel for the Warden attempted to show the current status with respect to the detainers filed by Kansas and Nevada (*supra,* 3), and that, according to California practice, detainers were honored according to the chronological order in which they were received. The Court stated it would consider these matters only if counsel for George so stipulated. He did not (A. 42-55).

Thereafter, on May 9, 1969, the Court of Appeals for the Ninth Circuit issued its opinion reversing the District Court and remanding the case to the District Court for further proceedings (A. 56-61). In reaching that decision, the Court first held that the decision in *Peyton v. Rowe* applied to this case. The Court stated (A. 59):

> "In *Peyton v. Rowe*, the consecutive or successive sentences were imposed by the same sovereign. Here the first sentence was imposed against George by a California court, and the second was imposed by a North Carolina court. However, the rule established in *Rowe* that a federal habeas applicant may attack the validity of a second sentence without awaiting completion of service of the first sentence, applies even though the two sentences were imposed by different sovereigns. *Word v. North Carolina*, 4 Cir., 406 F.2d 352, 355; *United States ex rel. Van Scoten v. Commonwealth of Pennsylvania*, 3 Cir., 404 F.2d 767, 768."

The Court then stated (A. 59):

> "This brings us to the question of whether, under the circumstances of this case, a habeas proceeding should be entertained in the district of confinement (California) or in the district of sentencing (North Carolina).
>
> "Since George is in state custody in the Northern District of California, we think that district court has jurisdiction to entertain the habeas application. Title 28 U.S.C. § 2241(a) provides that writs of habeas corpus may be granted by the district courts 'within their respective jurisdictions.' In *Ahrens v. Clark*, 335 U.S. 188, the Supreme Court held that this phrase means the district in which the petitioner is detained or confined when the petition is filed. [Footnote omitted.] See also, *Ashley v. Washington*, 9 Cir., 394 F.2d 125, 126."

The Court also stated (A. 60):

> "It is also our view that, while the challenged judgment is that of North Carolina, the California warden is a proper respondent. He is the actual custodian of George by reason of the California conviction and also as agent of the North Carolina warden, as evidenced by the detainer. If the California warden does not wish to defend the North Carolina conviction he can call upon the authorities of North Carolina to provide that defense."

In holding that the California district court as the district of confinement was the proper court in which to bring the action, the Court frankly recognized that its decision was directly contrary to the decision rendered by the Fourth Circuit in *Word v. North Carolina,* 406 F.2d 352 (4th Cir. 1969) (A. 60). The Court stated (A. 60):

> "In holding that the California district court has jurisdiction, we have not overlooked the fact that the Fourth Circuit, in *Word v. North Carolina,* 4 Cir., 406 F.2d 352, has reached a contrary result. The *Word* court affirmed the dismissal of two habeas applications filed in a Virginia district court by Virginia prisoners challenging North Carolina convictions. In doing so, however, the Fourth Circuit did not seem to announce a categorical rule that a district court in the district of custody could never assume juridiction. Instead, it said '. . . the latter, where permissible [is] infrequently preferable.'"

Finally, the Court concluded (A. 60-61):

> "We recognize that, under the law of the Fourth Circuit, as established in the *Word* decision, a federal district court in North Carolina could have entertained George's application. It was there held that a North Carolina district court should not have dismissed, on juridictional grounds, the habeas application of a Vir-

ginia prisoner who sought to set aside a North Carolina conviction. [Footnote omitted.] But the problem before us is not whether a district court in North Carolina could have entertained George's application, but whether the district court in California, where the application was filed, had jurisdiction. We do not now pass upon the question of whether the California district court may, after this remand, transfer the cause to the North Carolina district court pursuant to 28 U.S.C. § 1404(a) (1964).

"It cannot be denied that the entertaining of such proceedings in the state of confinement rather than the state where the challenged conviction was obtained presents practical problems. But, likewise, a rule requiring the prisoner to seek relief in the latter state presents practical problems. They are discussed at some length in the opinions filed in *Word v. North Carolina.* We do not see how a disposition of this appeal can avoid one set of problems or the other. Perhaps new judicially or legislatively-fashioned techniques are needed to meet these problems, now that *Peyton v. Rowe* has assured state prisoners an immediate right to attack convictions not yet being served. But all that is presented to us at this time are the questions of California district court jurisdiction and indispensability of parties."

Following the issuance of the Ninth Circuit decision, a timely petition for rehearing and suggestion for rehearing en banc was filed by petitioner (A. 2). That petition was denied on June 18, 1968 (A. 2, 62).

SUMMARY OF ARGUMENT

Title 28, United States Code section 2241(c)(3) provides that federal district courts may issue habeas corpus writs on behalf of prisoners who are "in custody in violation of the Constitution . . . of the United States." In *Peyton v.*

Rowe, 391 U.S. 54 (1968), this Court held that a state prisoner serving consecutive sentences is "in custody" under any one of them under section 2241(c)(3).

In *Peyton v. Rowe, supra,* the consecutive sentences were imposed by one sovereign state for crimes committed within that state. In the present case, sentences have been imposed by separate sovereign states, neither of which has given effect to the sentence imposed by the other. Accordingly, George is not "in custody" under the North Carolina judgment and the decision of *Peyton v. Rowe, supra,* is not applicable to the facts of this case.

Even if it could somehow be said that George is "in custody" under the North Carolina judgment, the Court of Appeals erred in holding that the California warden is a proper party respondent to defend the North Carolina judgment. George is in custody only because of the California conviction. The North Carolina judgment has been given no effect in California. There is no action which the California warden can take which will affect that judgment or bind North Carolina authorities.

The mere fact that a detainer has been filed in California by North Carolina officials does not make the California warden an agent for North Carolina. A detainer is merely a request for notice of the inmate's release and an opportunity to take him into custody upon release.

Since the California warden is not an appropriate party respondent and there has been no North Carolina official before the Court against whom a binding judgment can be taken, jurisdiction to proceed is lacking in the District Court. In holding to the contrary, the Court of Appeals has created innumerable practical difficulties which only serve to emphasize the legal error committed.

Just as this action cannot be brought in California, so, too, this action could not have been brought in North

Carolina. *Ahrens v. Clark,* 335 U.S. 188 (1948), holds that a petition for writ of habeas corpus must be brought if at all in the district of confinement. Accordingly, to the extent that the decision rendered by the Fourth Circuit in *Word v. North Carolina,* 406 F.2d 352 (4th Cir. 1969) is to the contrary, it is erroneous. The lack of appropriate forum in which to bring this action serves to make clear that *Peyton v. Rowe* does not apply to this case.

ARGUMENT

I. Since George Is Not "In Custody" Under the North Carolina Conviction, the Decision in Peyton v. Rowe, 391 U.S. 54 (1968) Does Not Apply to This Case.

Title 28, United States Code section 2241(c)(3) provides that federal district courts may issue writs of habeas corpus on behalf of prisoners who are "in custody in violation of the Constitution . . . of the United States." In *Peyton v. Rowe,* 391 U.S. 54 (1968), this Court overruled *McNally v. Hill,* 293 U.S. 131 (1934), and held that a prisoner serving consecutive sentences is "in custody" under any one of them for purposes of section 2241. Accordingly, it was held that a state prisoner could challenge the constitutionality of a consecutive sentence in a federal habeas corpus proceeding.

In *Peyton v. Rowe, supra,* the sentences to be served were imposed by one sovereign state for crimes committed within that state. Rowe had been sentenced to a 30-year term of sentence and then to a 20-year sentence for crimes arising out of the same events. As the Court noted, "[p]ractically speaking Rowe is in custody for 50 years, or for the aggregate of his 30 year sentence and 20 year sentences. For purpose of parole eligibility, under Virginia law, he is incarcerated for 50 years." *Peyton v. Rowe, supra,* at 64. The respondent Thacker similarly had been imprisoned by the same sovereign state under a number of sentences totaling more than 60 years.

In the case at bar, the facts are entirely different. Here, the sentences to be served have been imposed by separate sovereign states for separate criminal acts. Neither California, which imposed its sentence first, nor North Carolina, which imposed its sentence later, has given any effect to the conviction rendered by the other.

George is presently in custody in California solely because of his California conviction. Service on his North Carolina sentence will not begin until he is in North Carolina. When that will be is uncertain, in any case and particularly here since George is presently serving an indeterminate life sentence. As a matter of fact, it could be that George might never complete his sentence in California or begin to serve his North Carolina sentence.

For these reasons it cannot be said, that George is "in custody" under the North Carolina sentence. This conclusion must be reached where separate sentences have been imposed by different states. While it has been suggested (Opp. Cert. 10) that it is merely an "accident" that the sentences have been imposed by two different states, that suggestion misses the basic point that it is a federal system of government under which we live and that each state has a separate interest because of the commission of a crime within its borders.

Accordingly, it must be concluded that *Peyton v. Rowe, supra,* does not apply to the interstate case. That the Court itself recognized that its decision could not apply to all cases is indicated by language contained in the opinion itself. There, in describing the benefits to be achieved by *Peyton v. Rowe,* the Court stated:

> "Meaningful factual hearings on alleged constitutional deprivations can be conducted before memories and records grow stale, *and at least one class of prisoners* [emphasis supplied] will have the opportunity to

challenge defective convictions and obtain relief without having to spend unwarranted months or years in prison." *Peyton v. Rowe, supra,* 65.

II. The California Warden Is Not the Proper Party Respondent to Defend the North Carolina Conviction.

Although *Peyton v. Rowe, supra,* does not apply to this case, the Court of Appeals held to the contrary. Furthermore, in holding that George could attack his North Carolina sentence now, the Court held that the California warden was the proper party respondent to defend the North Carolina conviction. The Court stated (A. 60):

> "It is also our view that, while the challenged judgment is that of North Carolina, the California warden is a proper respondent. He is the actual custodian of George by reason of the California conviction and also as agent of the North Carolina warden, as evidenced by the detainer. If the California warden does not wish to defend the North Carolina conviction he can call upon the authorities of North Carolina to provide that defense."

The Court erred in reaching this conclusion. The California warden is custodian of George because of the California conviction and not because the State of North Carolina also convicted him.

The Court's conclusion is not required by Title 28, United States Code section 2243. That section provides that the "writ . . . shall be directed to the person having custody of the person detained." This provision reflects the long standing rule that the proper party respondent must be "some person who has immediate custody of the party detained, with the power to produce the body of such party before the court or judge. . . ." *Wales v. Whitney,* 114 U.S. 564, 574 (1885); see also, *Ex parte Endo,* 323 U.S. 238, 304-307 (1944); *Jones v. Cunningham,* 371 U.S. 236, 243-244 (1963).

Such a party has been held to be an indispensable party in order for habeas corpus relief to be granted. *King v. State of California*, 356 F.2d 950 (9th Cir. 1966); *Morehead v. State of California*, 39 F.2d 170 (9th Cir. 1964): *Roseborough v. State of California*, 322 F.2d 788 (9th Cir. 1963); *Bohm v. State of Alaska*, 320 F.2d 851 (9th Cir. 1963).

The reason for this requirement is clear. It is a recognition of the necessity that jurisdiction must be obtained over the person of one empowered to deliver the body of the petitioner if custody should be declared illegal, *Wales v. Whitney, supra.* Put in more modern terms, it is a recognition of the fact that jurisdiction must be obtained upon one who is able to take whatever other action "law and justice require." 28 U.S.C. § 2243; *Ex parte Endo*, 323 U.S. 283, 304-307 (1944); *Jones v. Cunningham*, 371 U.S. 236, 243-244 (1963).

The purpose of this rule is not served by naming the California Warden as the proper party respondent to defend the North Carolina judgment. While the California Warden is the actual custodian of George, he is the actual custodian only because of the California conviction, and not because of the North Carolina conviction. There is no interest which he has in defending the North Carolina conviction, nor is there any action he can take which will affect the North Carolina conviction.

When George requested to stand trial in North Carolina under the provisions set forth in California Penal Code section 1389, et seq. ("The Agreement on Detainers") the California authorities relinquished control and custody under the Agreement in order to permit him to do so. However, the California Warden did not assume any additional custodial obligations on behalf of North Carolina when George was received back into California custody.

This is not a case where California has given some effect to the conviction of North Carolina, as for example, by increasing punishment or classifying the defendant a habitual criminal. Thus, cases like *United States ex rel. Durocher v. La Vallee,* 330 F.2d 303, 306 (2nd Cir. 1964), *cert. denied,* 377 U.S. 998 (1964), which have permitted attack against a sister-state conviction in such circumstances are not applicable here.

Similiarly, the mere filing of a detainer by the North Carolina authorities does not render the California Warden their agent. A detainer is a request for notice of the inmate's release and an opportunity to take him into custody upon release. In California, a letter from any institution or law enforcement agency requesting that notification be given prior to the inmate's release is considered to be sufficient authority for placement of a detainer. A warrant or similar document may be accepted for the same purpose (A. 43-53). In complying with a request for notification, the California warden cannot be deemed an agent for the performance of what is essentially an administrative function. Certainly it never has been this State's position that the filing of a detainer with another state or even with the federal government, constituted those authorities our agent for the purpose of defending a California conviction.[2]

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2. Indeed, the questionable soundness of the "agency" theory adopted by the Court was recently demonstrated in another case involving the same parties in the United States District Court for the Northern District of California, entitled *John Edward George v. Lolis S. Nelson, Warden, San Quentin State Prison and State of Kansas, Donald Foster, Agent for Same,* Case No. 51720. The Supreme Court may take judicial notice of cases pending in lower federal courts. *Brown v. Board of Education of Topeka,* 344 U.S. 1 (1952).

In that case George filed a habeas corpus petition seeking to set aside the Kansas detainer which earlier had been filed because of the untried robbery charge pending there. George urged that because he had not yet been tried in Kansas, he had been denied a

Furthermore, the questions raised in the present case do not pertain to the possible effects of a detainer. This was not the basis of the court's decision and the effect, if any, in George's case is not a matter of record.

Furthermore, even assuming that a conviction detainer has some effect, as, for example, upon custody classification, habeas corpus is generally not available to test the conditions of admittedly lawful custody. *United States* ex rel. *Shonbrun v. Commanding Officer,* 403 F.2d 371 (2nd Cir. 1968) *cert. denied,* 394 U.S. 929 (1969). If such a detainer does have any adverse effect on custody it is in light of the knowledge that the inmate is wanted in another jurisdiction and that greater motivation to escape might therefore exist. On the other hand the fact that a detainer is filed could be of beneficial effect because it might result in an earlier release date than would otherwise be the case.[3] In any vent, the possible effects of a detainer would not seem to have sufficient substantive impact to require a full review of the underlying conviction, particularly one which has already been affirmed by a state supreme court.

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right to speedy trial. In our return to the show cause order, we showed, *inter alia,* that the detainer filed by Nevada had now been removed, and that Kansas was now a party to the Interstate Agreement on Detainers. The State of Kansas also filed a pleading setting forth that fact. Since an opportunity thus presently existed under which George could go to Kansas to stand trial if he wished, the district court dismissed the proceedings on the ground that George had failed to exhaust administrative remedies under the Agreement on Detainers.

At the time of that action, however, because of the detainers that had been filed, the California warden was called upon to defend a North Carolina judgment of conviction and an untried charge in Kansas. Neither law nor practicality requires that result.

3. For example, in a state like California where a policy of having sentences served concurrently is favored (see, *e.g., In re Stoliker,* 49 Cal.2d 75, 315 P.2d.12 (1957)), the fact that a conviction detainer has been filed might well result in an earlier parole release date than otherwise be the case. This would be particularly true if the detainer was filed by a state of the prisoner's normal residence and it was known that a long prison term awaited him there (A. 37).

III. The Court of Appeal Erred in Holding That the District Court for the Northern District of California Has Jurisdiction to Review the North Carolina Judgment.

The Court of Appeal also erred in holding that the District Court for the Northern District of California has jurisdiction to review the North Carolina judgment. An appropriate party respondent must be within the territorial jurisdiction of the reviewing court in order for federal habeas corpus relief to be granted, *Wales v. Whitney,* 114 U.S. 564 (1885); *Jones v. Biddle,* 131 F.2d 853 (8th Cir. 1942), *cert. denied,* 318 U.S. 784 (1943) and as we have shown above the California warden is not an appropriate party respondent. On the other hand, a North Carolina official who would be an appropriate respondent is not before the Court. Such an official has not been served with process, and under Rule 4(f) of the Federal Rules of Civil Procedure, proper service could not be obtained.

The decision in *Carbo v. United States,* 364 U.S. 611 (1961), makes clear that the writ of habeas corpus cannot be issued outside the territorial confines of the district court. In that case it was held that a California District Court had the power to issue a writ of habeas corpus ad prosequendum to a New York City prison official directing him to deliver the petitioner, a prisoner of that city, to California to stand trial. However, in reaching that decision the Court clearly differentiated between a writ of habeas corpus ad prosequendum and the Great Writ—habeas corpus ad subjiciendum—with which the present matter is concerned. In the latter case the Court clearly concluded that territorial limitations exist. Accordingly, without either an appropriate North Carolina official as an indispensable party before the Court, or the power to issue the writ outside its district, the District Court for the

Northern District of California is without jurisdiction to proceed.

Furthermore, merely naming the California warden as the party respondent because of the detainer filed does not give the California District Court jurisdiction which is otherwise lacking. Any judgment the Court might render therefore would not be binding upon any North Carolina official. As this Court recently pointed out in *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969):

> "The Court of Appeals was quite right in vacating the judgments against Hazeltine. It is elementary that one is not bound by a judgment *in personam* resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process. *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940). The consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant. *E.g., Pennoyer v. Neff*, 95 U.S. 714 (1878); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418 (1957).
>
> "Here, Hazeltine was not named as a party, was never served and did not formally appear at the trial. Nor was the stipulation an adequate substitute for the normal methods of obtaining jurisdiction over a person or a corporation. The stipulation represented HRI's agreement to be bound by and to be liable for the acts of its parent, but it was signed only by HRI, through its attorney, Dobbs. Hazeltine did not execute the stipulation, and Dodds, although an officer of Hazeltine, did not purport to be signing on its behalf. The trial court apparently viewed the stipulation as binding Hazeltine, as equivalent to an entry of appearance, or as consent to entry of judgment against it. The stipulation on its face, however, hardly warrants this construction, and if there were other circumstances which justified the trial court's conclusion, the findings do not reveal them."

Similarly, the filing of the detainer does not give the District Court jurisdiction to review the underlying North Carolina judgment. In this connection, *Sweeney v. Woodall,* 344 U.S. 86 (1952), and other similar cases involving extradition proceedings are analogous to, and controlling of, the proposition that an attack may not be made upon the underlying conviction of a sister-state when attacking either an extradition warrant or a detainer. In the *Sweeney* decision, an Alabama fugitive from prison sought to prevent his rendition to Alabama by bringing a petition for writ of habeas corpus in the asylum state of Ohio. The respondent charged that during his confinement in Alabama he had been brutally mistreated, and that he would be subjected to such mistreatment and worse if returned to Alabama. In its decision, the Court stated that the question to be decided was as follows:

> "In the present case, as in the others, a fugitive from justice has asked the federal court in his asylum to pass upon the constitutionality of his incarceration in the demanding state, although the demanding state is not a party before the federal court and although he has made no attempt to raise such a question in the demanding state. The question is whether, under these circumstances, the district court should entertain the fugitive's application on its merits." *Sweeney v. Woodall, supra,* at 88-89.

In thereafter holding that the respondent was not entitled to relief, the Court stated:

> "Respondent makes no showing that relief is unavailable to him in the courts of Alabama. Had he never eluded the custody of his former jailers he certainly would be entitled to no privilege permitting him to attack Alabama's penal process by an action brought outside the territorial confines of Alabama in a forum where there would be no one to appear and answer

for that State. Indeed, as a prisoner of Alabama, under the provisions of 28 U.S.C. § 2254, and under the doctrine of *Ex parte Hawk, supra,* he would have been required to exhaust all available remedies in the state courts before making any application to the federal courts sitting in Alabama.

"By resort to a form of 'self help,' respondent has changed his status from that of a prisoner of Alabama to that of a fugitive from Alabama. But this should not effect the authority of the Alabama courts to determine the validity of his imprisonment in Alabama. The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; these provisions do not contemplate an appearance by Alabama in respondent's asylum to defend against the claimed abuses of its prison system. Considerations fundamental to our federal system require that the prisoner test the claimed unconstitutionality of his treatment by Alabama in the courts of that State. Respondent should be required to initiate his suit in the courts of Alabama, where all parties may be heard, where all pertinent testimony will be readily available and where suitable relief, if any is necessary, may be fashioned" [footnotes omitted]. *Sweeney v. Woodall, supra,* at 89-90.

Decisions in the lower courts similarly show that extradition proceedings are "not a means of determining the guilt or innocence of the accused," but rather that review is limited. As the Ninth Circuit stated in *Smith v. State of Idaho,* 373 F.2d 149, 155 (9th Cir. 1967), *cert. denied,* 388 U.S. 919 (1967):

"[T]here are only two inquiries relevant to the decision to issue a rendition warrant for the arrest of the accused. The first is whether the accused has been substantially charged with a crime under the laws

of the demanding state. The second is whether the person demanded is a fugitive, that is, whether he was within the demanding state at the time of the alleged offense. The first is a question of law; the second, a question of fact."

Similar considerations of comity and practicality must prevail here.

IV. The Practical Difficulties Raised by the Court's Decision Emphasize the Legal Error Committed by the Court.

The practical difficulties raised by the Court's decision emphasize the legal error committed. Indeed, it may be noted at the outset, that the difficulties raised by the present case are a catalogue of the very ills that the Congress attempted to remedy in the 1940's when, in revising the Judicial Code, it substituted 28 U.S.C. § 2255 or the motion to vacate sentence for federal habeas corpus relief for prisoners in federal custody.

These difficulties are outlined in *United States v. Hayman*, 342 U.S. 205, 210-214 (1952), wherein the Court listed the "practical problems that had arisen in the administration of the federal courts habeas corpus jurisdiction." There the Court noted, inter alia, that because habeas corpus petitions must be filed in the district of confinement, those courts which had federal prisons located within their jurisdictions were burdened with an excessive number of habeas corpus petitions. In some cases, the petitions could have been shown to be frivolous, if the court records had been available, but they were not. In cases which required an evidentiary hearing to resolve the factual issues raised, the hearings had to be held away from the "scene of the facts," and away from the homes of the witnesses or the federal officers involved.

Exactly the same practical difficulties are encountered here. At least one claim raised by George—that of knowing use of perjured testimony—would require an evidentiary hearing if habeas corpus relief were available. However, the records, the witnesses, and the officers allegedly involved are all in North Carolina. To require the records and witnesses to be transported across country, even assuming that one could legally or practically do so, is only one of very real difficulties considered by the court's decision.

Thus, the gratuitous remark made by the Court that the California warden may call upon the North Carolina authorities to defend the conviction does not insure that result. The failure of an appropriate North Carolina official to voluntarily appear in California to date is understandable in light of the practical difficulties encountered in holding a hearing in California, the fact that a California District Court judgment rendered without him would have no binding effect, and the very real possibility that a hearing now might be an exercise in futility because George might never serve his North Carolina sentence.

Finally, when the steady increase in the numbers of petitions for writs of habeas corpus which are filed each year is considered, as well as the fact that the concept of a plenary hearing has greatly expanded since the decision in *Townsend v. Sain*, 372 U.S. 293 (1963), the extent of the practical difficulties outlined in *Hayman* in 1952 seem minor by comparison.[4] These practical difficulties which are inherent in the Court's decision only serve to make clear the legal error committed.

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4. Detainers are filed against prisoners by many different sources for a variety of reasons. They may be filed against an escapee, a parolee, or one who is to stand trial or complete his sentence. Furthermore, they may be placed one day and removed another. Accordingly, there are no statistics of which we are aware

V. The Lack of Available Forum in Any District Court Makes Clear That George Is Not Now "In Custody" Under the North Carolina Conviction.

As noted by the Ninth Circuit, this decision conflicts with that decided by the Fourth Circuit in *Word v. North Carolina, supra,* to the extent that the *Word* court held that the district of sentencing, rather than the district of confinement, is the appropriate forum in which to challenge the later sentence. However, because a prisoner who has yet to serve a sentence in another state cannot be held to be "in custody" within the meaning of section 2241(c)(3), the decision rendered by the Court in *Word* is just as erroneous as that rendered by the Ninth Circuit here. Furthermore, the decision in *Word* is contrary to the decision of this Court in *Ahrens v. Clark,* 335 U.S. 188 (1948).

Title 28, United States Code section 2241 provides, *inter alia,* that the District Court may issue a writ of habeas corpus only within its respective jurisdiction. In interpreting this section in *Ahrens v. Clark, supra,* it was held that the petitioner must be in custody within the territorial jurisdiction of the District Court, at least initially, in order for the jurisdiction of the court to attach and for relief to be

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which show precisely how many and what kind of detainers, are filed in California or any other state each year. To obtain such figures apparently would require going through the file of each prisoner.

We can only note that the 1969 Report of the Administrative Office of the United States Courts, p. II-52 shows that:

> "The number of petitions for post-conviction relief filed by federal and state prisoners increased sharply in 1969, following the trend of the last decade. During the year 12,924 prisoners were received by the district courts—up 16 percent from the 11,152 filed in 1968 and nearly twice the number filed in 1964. All categories of prisoner cases increased, as federal prisoner petitions were up 27 percent and state prisoner petitions were up 12 percent. These cases, which comprise the largest single element in the civil caseload of the district courts, accounted for more than one-sixth of the civil filings in 1969."

granted. See also *Ex parte Endo,* 323 U.S. 283, 304-307 (1944); *Jones v. Cunningham,* 371 U.S. 236, 243-244 (1963).

In *Ahrens v. Clark,* a group of Germans was being held at Ellis Island, New York, for deportation to Germany. Their deportation had been directed under removal orders issued by the Attorney General, who was named as respondent. In affirming the dismissal of the petition this Court acknowledged that the writ must be directed to the prisoner's custodian. *Ahrens v. Clark,* supra, at 190. Nevertheless, the Court held that a district court's jurisdiction is dependent upon the physical presence of the prisoner within its territorial limits. In limiting the district courts to inquiries into the causes of restraints upon those confined or restrained within its territorial jurisdiction, the Court looked to the legislative history of section 2241. It noted that in adopting the language of section 2241, the Congress had specifically inserted the words "within their respective jurisdictions" in order to avoid the possibility that an application might be made to " 'a district judge in Florida to bring before him some men convicted and sentenced and held under imprisonment in the State of Vermont or in any of the further States.' Cong. Globe, 39th Cong., 2d Sess. 730." *Ahrens v. Clark, supra,* at 192. The Court also noted that as a practical matter, a different rule would create the expense and danger inherent in transporting a prisoner long distances.

Accordingly, in view of this decision, the Ninth Circuit and others have held that a habeas corpus petition must be brought, if at all, in the district court of confinement. *Ashley v. State of Washington,* 394 F.2d 125 (9th Cir. 1968); *Booker v. State of Arkansas,* 380 F.2d 240 (8th Cir. 1967); *United States ex rel. Van Scoten v. Pennsylvania,* 404 F.2d 767 (3rd Cir. 1968).

Only *Word v. North Carolina, supra,* is to the contrary, and in that case the Fourth Circuit held that Virginia prisoners could bring a habeas corpus action in North Carolina to challenge the sentences they were to later serve. (In reaching that decision, the Court left room in the "proper" case for suit in the district of confinement.)

The basic error of the *Word* court, of course, was in holding that the Virginia prisoners were presently entitled to federal habeas corpus relief. Since the decision in *Word* is erroneous, this action could not have been brought in North Carolina. Thus, any indication by the Ninth Circuit Court that this action might possibly be transferred to North Carolina is misleading.

Accordingly, it must be concluded that the lack of any available forum in which George might bring his action now only serves to emphasize that he is not presently "in custody" under section 2241(c)(3) and that the decision in *Peyton v. Rowe, supra,* is not applicable here. This is not to say that George has not, and will not, have a "day in court." He already has had at least two of his claims adjudicated by the North Carolina Supreme Court, and when and if he is in North Carolina custody, he may surely seek federal habeas corpus relief then. This was the result before *Peyton v. Rowe* and we think that that must be the result now.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the decision of the Court of Appeals be reversed and the proceedings dismissed.

Dated: January 22, 1970.

THOMAS C. LYNCH
Attorney General of the State of California

ALBERT W. HARRIS, JR.
Assistant Attorney General

EDWARD P. O'BRIEN
Deputy Attorney General

LOUISE H. RENNE (MRS.)
Deputy Attorney General

Attorneys for Petitioner

(Appendix Follows)

Appendix A

UNITED STATES CODE
Title 28

§ 1254. Courts of appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

§ 2241. Power to grant writ.

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(3) He is in custody in violation of the Constitution or laws or treaties of the United States;

§ 2243. Issuance of writ; return; hearing; decision.

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained.

* * * * * * *

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

§ 2254. State custody; remedies in Federal courts.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

§ 2255. Federal custody; remedies on motion attacking sentence.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

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An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 4.

Process

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 14, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Rule 19, may be served in the manner stated in paragraphs (1)—(6) of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.

CALIFORNIA PENAL CODE

Chapter 8.5. Agreement on Detainers [New]

§ 1389. Disposal of detainers against prisoner based on untried charges, etc.

The agreement on detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

The Agreement on Detainers

The contracting states solemnly agree that:

Article 1

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informa-

tions or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term

of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of

this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall

furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made

by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any

other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different

allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any pro-

ceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (Added Stats. 1963, c. 2115, p. 4394, § 1.)

§ 1389.1 Appropriate court

The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this State, means the court in which the indictment, information, or complaint is filed. (Added Stats. 1963, c. 2115, p. 4394, § 1).

§ 1389.2 Enforcement; co-operation

All courts, departments, agencies, officers, and employees of this State and its political subdivisions are hereby directed to enforce the agreement on detainer and to co-operate with one another and with other states in enforcing the agreement and effectuating its purpose. (Added Stats. 1963, c. 2115, p. 4394, § 1.)

§ 1389.3 Habitual criminals; application of act

Nothing in this chapter or in the agreement on detainers shall be construed to require the application of Section 644 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement. (Added Stats. 1963, c. 2115, p. 4394, § 1.)

§ 1389.4 Escapes

Every person who has been imprisoned in a prison or institution in this State and who escapes while in the custody of an officer of this or another state in another state pursuant to the agreement on detainers is deemed to have violated Section 4530 and is punishable as provided therein. (Added Stats. 1963, c. 2115, p. 4394, § 1.)

§ 1385.5 Surrender of inmates

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this State to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainer. Such official shall inform such inmate of his rights provided in paragraph (a) of Article IV of the Agreement on Detainers in Section 1389 of this code. (Added Stats. 1963, c. 2115, p. 4394, § 1.)

§ 1389.6 Administration

The Administrator, Interstate Probation and Parole Compacts, shall administer this agreement. (Added Stats. 1963, c. 2115, p. 4394, § 1.)

§ 1389.7 Sentence concurrent with that of other jurisdiction; term-fixing and parole functions.

When, pursuant to the Agreement on Detainers, a person in actual confinement under sentence of another jurisdiction is brought before a California court and sentenced by the judge to serve a California sentence concurrently with the

sentence of the other jurisdiction, the Adult Authority and the California Women's Board of Terms and Parole, and the panels and members thereof, may meet in such other jurisdiction, or enter into cooperative arrangements with corresponding agencies in the other jurisdiction, as necessary to carry out the term-fixing and parole functions. (Added Stats. 1963, c. 2115, p. 4394, § 1, as amended Stats. 1965, c. 238, p. 1215, § 1.)